

EXHIBIT 171

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4

5 -----x
6 IN RE: NATIONAL PRESCRIPTION) Case No.
7 OPIATE LITIGATION) 1:17-MD-2804
8 APPLIES TO ALL CASES) Hon. Dan A. Polster
9 -----x

10 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
11 CONFIDENTIALITY REVIEW
12

13 VIDEOTAPED DEPOSITION OF HENRY JOHN MORTELLITI, III
14
15 WASHINGTON, D.C.

16
17 WEDNESDAY, JANUARY 23, 2019
18

19 8:05 A.M.
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Reported by: Leslie A. Todd

1 A I wasn't involved with it in 1999.

2 Q When was your first involvement with
3 suspicious order monitoring of -- of hydrocodones?

4 A It -- it was a while ago. I'm going to
5 say somewhere around 2008, 2009.

6 Q And you understand that hydrocodone is a
7 controlled substance?

8 A Yes.

9 Q You've known that since 1999?

10 A Yes.

11 Q You understand that it is a narcotic?

12 A Yes.

13 Q You understand that it is not just any
14 narcotic, but it is a narcotic that became a -- a
15 focus of what has been described as an opioid
16 crisis in this country. Do you understand that?

17 A I know there's a lot of talk about the
18 opioid situation.

19 Q And you understand the role of
20 hydrocodone in that opioid -- what you call a
21 situation?

22 A Yes.

23 Q And we'll get into more detail, but
24 just -- just to start, you understand that -- that

1 CVS had certain responsibilities with respect to
2 suspicious order monitoring as it relates to
3 hydrocodones.

4 A I knew that I was given a responsibility
5 to oversee a process during a certain time period.
6 As for the overall expectation, I just -- I just
7 followed the process when it came to me.

8 Q And that would have been in '08 and '09?

9 A Somewhere in there, yes.

10 Q In '08 or '09 when you first became
11 involved with suspicious order monitoring at CVS,
12 what was your official title at that point?

13 A I was a loss prevention manager.

14 Q At Lumberton?

15 A Yes.

16 Q Did you have any duties and
17 responsibilities beyond Lumberton in '08 and '09?

18 A I -- I -- when -- okay. I -- I believe
19 I had the Mid-Atlantic during this time period.

20 Q And so that would have involved what
21 distribution centers?

22 A The alignments changed almost every
23 year, so I'm not 100 percent sure, but it would
24 have been Fredericksburg, Lumberton, North

1 close to 500, close to 400 -- 400, right?

2 A Yeah, 375 -- 150, 3 -- yep, 375.

3 Q And this is for one of ten distribution
4 centers, and you were looking at IRRs for the
5 entire country, all distribution centers, true?

6 A True.

7 Q In addition to an IRR -- and this is a
8 daily report, right?

9 A Yes.

10 Q And in addition to this daily report
11 that you were looking at beginning in '09, you
12 were also looking at the PSE report, true?

13 A Yes.

14 Q And the PSE report, would that be again
15 hundreds of -- of orders that you would also have
16 been looking at in addition to the hundreds of
17 orders of controlled substances?

18 A I don't remember that many on a typical
19 IRR.

20 Q This period of time, '09 and into '10
21 when you were looking at the IRR, were you the
22 only person nationally looking at the IRR every
23 single day for CVS?

24 A For a period of time I was.

1 legitimate, no matter what the drug was. If it
2 wasn't legitimate, I wasn't going to let it go.

3 BY MR. KENNEDY:

4 Q Okay. Let's go back to hydros then.
5 You're not looking for patterns when you looked at
6 the IRR in 2009 for hydrocodones. What do you do
7 with the hydrocodones that are flagged as of
8 interest or potentially suspicious?

9 A Freeze the orders within the
10 distribution centers. I would contact the field
11 VIPER analyst in those areas. I would also
12 contact the regional loss prevention managers for
13 them to do an investigation.

14 Q And you did that in 2009 up to October
15 of 2010 for every flagged hydrocodone order. Is
16 that your testimony?

17 A Yes.

18 Q How long would these orders remain
19 freezed?

20 A Until they were cleared by the field.

21 Q How long would that take?

22 A For the most part, a lot of the stores
23 were within range. Sometimes the same day,
24 sometimes two days because they wanted to do more

1 if you were noncompliant on this date, can we
2 agree that you and CVS would have been
3 noncompliant all the way back from the beginning
4 with your IRR in '09 when you started reviewing?

5 MR. BUSH: Objection.

6 BY MR. KENNEDY:

7 Q Can we agree?

8 MR. BUSH: Objection.

9 THE WITNESS: No, we were compliant. I
10 worded this to get it pushed through the system.

11 BY MR. KENNEDY:

12 Q Sir, the IRR with the way it was
13 structured, monitoring by active ingredient, that
14 was true from the very beginning. True?

15 MR. BUSH: Objection. Misstates the
16 document and the testimony.

17 BY MR. KENNEDY:

18 Q Is that true?

19 MR. BUSH: Objection.

20 BY MR. KENNEDY:

21 Q Excuse me. Let me restate that.

22 The monitoring of controlled substances
23 was not being monitored by active ingredient since
24 the beginning of the IRR's creation in '09,

1 myself to get friendly with Gary Misiaszek, hoping
2 he would push my -- my request through so I could
3 get all the data put back onto the IRR and ease
4 some of the workload I had.

5 Q What was your common sense approach?

6 A There was no common sense approach. I
7 was trying to be funny with him, trying to be
8 friendly. I manually took all the historical data
9 from previous IRRs and filled in the blanks for
10 all the historical data.

11 Q You were trying to do what a computer
12 and six algorithms were doing, right?

13 A No, I was copying, and I had people
14 helping me.

15 Q And what you were trying to do was fill
16 in historical data and do what a computer and six
17 algorithms were doing.

18 A By filling in the historical data?

19 Q Yes.

20 A I guess the printer would have printed
21 it.

22 Q And then what would you do with it when
23 you got it?

24 A Review it.

1 Q And what would you do, sir, when you
2 would review it? What algorithms or mathematical
3 formulas were you applying that the algorithm had
4 previously been providing?

5 MR. BUSH: Objection.

6 THE WITNESS: Oh, okay. Actually -- I
7 took the data from previous LAGs, filled it in,
8 and erred on the side of caution. If -- if they
9 were over the trend, I just automatically
10 forwarded them out for investigation. I froze
11 them.

12 BY MR. KENNEDY:

13 Q The trending, before you did this with
14 common sense, was being done by the algorithms,
15 correct?

16 MR. BUSH: Objection.

17 THE WITNESS: But I -- I had that
18 information. It was printed on previous IRRs.
19 Yes.

20 (Exhibit No. 24 was premarked for
21 identification.)

22 BY MR. KENNEDY:

23 Q Let's go to Exhibit 24.

24 Start this one at the top. This is an